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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

LEONARD JERRETH DUNLAP,

Defendant and Appellant.

H027996

(Monterey County  
Super. Ct. Nos. SS032176, SS033109)

Defendant Leonard Jerreth Dunlap was sentenced together on two cases following the entry of his no contest pleas. The court imposed a combined sentence of five years and eight months for vehicle theft (Veh. Code, § 10851, subd. (a)) in case No. SS032176, and for possession of cocaine (Health & Saf. Code, § 11350, subd. (a)) in case No. SS033109. On appeal defendant argues that the abstract of judgment in case No. SS033109 mistakenly included a restitution fine of \$1000, when the court had imposed only \$200. The attorney general concedes the error, and points out one further error in the abstract of judgment in case No. SS033109, and two further errors in the abstract of judgment in case No. SS032176. Because the abstracts of judgment do not accurately reflect the oral judgment of the court, we shall direct that the clerk of the superior court amend the abstracts of judgment in case Nos. SS032176 and SS033109, as explained below. The judgments are affirmed as so modified.

## **CASE SUMMARY**

### ***Case No. SS032176***

On July 7, 2003, a complaint was filed in Monterey County Superior Court charging defendant in count 1 with vehicle theft (Veh. Code, § 10851, subd. (a)), and in count 2 with possession of cocaine (Health & Saf. Code, § 11350, subd. (a)). Both counts specially alleged that defendant had a prior strike conviction. (Pen. Code, § 1170.12, subd. (c)(1).)

On August 27, 2003, defendant pleaded no contest to count 1 and admitted the special allegation on the indication that the allegation would be stricken at sentencing and that defendant would be granted probation.

### ***Case No. SS033109***

On October 20, 2003, a complaint was filed in Monterey County Superior Court charging defendant in counts 1 and 2 with second-degree robbery (Pen. Code, § 211), and in count 3 with possession of cocaine (Health & Saf. Code, § 11350, subd. (a)). All counts specially alleged that defendant had a prior strike conviction (Pen. Code, § 1170.12, subd. (c)(1)) and that defendant was on bail when committing the offenses. (Pen. Code, § 12022.1.)

On June 24, 2004, defendant pleaded no contest to count 3 and admitted the special allegations on the indication that the prior strike allegation would be stricken at sentencing and that defendant would receive five years eight months in prison for both cases.

### ***Sentencing***

Defendant was sentenced on both cases on August 19, 2004. The court struck the prior conviction in both cases, denied probation, and sentenced defendant to the upper term of three years for possession of cocaine (count 3 in case No. SS033109), plus two years for the on-bail enhancement. The court imposed a consecutive term of eight

months for the vehicle theft (count 1 in case No. SS032176). The remaining charges and allegations were dismissed.

The court stated the following as to restitution: “Based on the five-year term, the restitution fine is \$1,000. Although I suppose in your case, Mr. Dunlap, I think the Court is going to impose a \$200 minimum restitution fine and only in 033109. Another \$200 is imposed and suspended and not to be paid unless and until you are on parole and have that parole revoked.” In response to the district attorney’s request for victim restitution, the court stated: “Six hundred dollars restitution. That is to the victim that is identified to the clerk of the court by the D.A. at this time, with an address. That becomes a civil judgment. So you’re responsible for paying that. Good luck.”

### ***The Abstracts of Judgment***

An abstract of judgment was filed on September 28, 2004 in case No. SS033109, and on September 30, 2004 in case No. SS032176. The abstract of judgment for case No. SS033109 reflected a restitution fine pursuant to Penal Code section 1202.4, subdivision (b), of \$1000, and an equal amount imposed under Penal Code section 1202.45, but suspended unless parole was revoked. However, there was no victim restitution fine pursuant to Penal Code section 1202.4, subdivision (f). The abstract of judgment for case No. SS032176 showed a restitution fine of \$200, pursuant to Penal Code section 1202.4, subdivision (b), and an equal amount pursuant to Penal Code section 1202.45. It also indicated that the “TOTAL TIME” imposed in this case was nine months.

### **ARGUMENT**

Defendant argues that the court’s imposition of a restitution fine of \$200 in case No. SS033109 during sentencing is controlling and that the abstract of judgment, which indicates a fine of \$1000 must be corrected. (See *People v. Mitchell* (2001) 26 Cal.4th 181, 185.) The attorney general agrees. We will therefore direct that the clerk of the superior court correct the abstract of judgment to reflect the court’s oral judgment.

The attorney general points out that the abstract of judgment for case No. SS033109 fails to note the court's imposition of a victim restitution fine of \$600.<sup>1</sup> We agree that this is error, and we will therefore direct that the clerk of the superior court correct the abstract of judgment to reflect the court's oral judgment.

In case No. SS032176, the attorney general points out that the abstract of judgment contains two errors. It includes restitution fines of \$200 under Penal Code section 1202.4, subdivision (b), and Penal Code 1202.45. However, the court clearly imposed the \$200 restitution fine "only in 033109." Finally, the abstract shows that the total time imposed was nine months, although the correct term was eight months, which is reflected elsewhere on the abstract. We agree that these are clerical errors and we will therefore direct that the clerk of the superior court correct the abstract of judgment to reflect the court's oral judgment.

### **DISPOSITION**

The clerk of the superior court is directed to modify the abstract of judgment in case No. SS032176 in the following respects: 1) the restitution fines of \$200, pursuant to Penal Code section 1202.4, subdivision (b) and Penal Code section 1202.45 shall be stricken; 2) the total time imposed shall be corrected to read eight months. The abstract of judgment in case No. SS033109 shall be amended in the following respects: 1) the restitution fines pursuant to Penal Code section 1202.4, subdivision (b), and Penal Code section 1202.45 shall be reduced from \$1000 to \$200; 2) a victim restitution fine of \$600, pursuant to Penal Code, section 1202.4, subdivision (f), shall be added. The clerk of the superior court is directed to forward the amended abstracts of judgment to the Department of Corrections. As so modified, the judgments are affirmed.

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<sup>1</sup> Although the robbery charges (counts 1 and 2 in case No. SS033109) were dismissed, the record reflects that they were to be considered for purposes of restitution.

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BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

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MIHARA, J.

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MCADAMS, J.